

### **REMARKS/ARGUMENTS**

This Amendment is submitted in response to the Office Action mailed June 20, 2003. At that time claims 1-31 were pending in the application. In the Office Action Summary, it was indicated that this action was both non-final and final. This is the first Office Action issued and the PAIR system indicated that the rejection was non-final. Applicants are proceeding under the assumption that this action is non-final, and that the inconsistency was a mere oversight.

In the Office Action, the Examiner rejected claims 1, 3-10, and 15-17 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,860,672 to Petersen (hereinafter "Petersen"). Claim 2 was rejected under 35 U.S.C. §103(a) as being unpatentable over Petersen in view of U.S. Patent No. 5,511,818 to Jarboe et al. (hereinafter "Jarboe"). Claims 11-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Petersen in view of U.S. Patent No. 6,474,684 to Ludwig et al. (hereinafter "Ludwig"). Claims 18-26 were also rejected under 35 U.S.C. §103(a) as being unpatentable over Petersen in view of Jarboe. Claims 18, 27-30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Petersen and Jarboe and further in view of Ludwig. Claim 31 was rejected under 35 U.S.C. §103(a) as being unpatentable over Petersen and Jarboe and further in view of Ludwig. Claims 13 and 29 were further rejected under 35 U.S.C. §112, second paragraph, for indefiniteness.

By this amendment, claims 1, 8, 18, 23, 25, and 31 have been amended. Accordingly, claims 1-31 are presented for reconsideration by the Examiner.

### **REJECTION OF CLAIMS 13 AND 29 UNDER 35 U.S.C. §112**

The Examiner rejected claims 13 and 29 under 35 U.S.C. §112, second paragraph for indefiniteness. See Office Action page 2. The Applicants respectfully traverse this rejection.

The Examiner claims the recitation "weighs between about one quarter of a kilogram and about four kilograms" is unclear. See Office Action page 2. However, the use of the term "about" has been held to be definite by the Federal Circuit. See *BJ Servs. Co. v. Halliburton Energy Servs., Inc.*, No. 02-1496, 2003 U.S. App. LEXIS 16074, at \*8 (Fed. Cir. Aug. 6, 2003)

(question is whether one with skill in the art would understand what range “about” included). One skilled in the art would have an understanding of weight measurements. Since one skilled in the art would know what “weighs between about one quarter of a kilogram and about four kilograms” means in light of the specification, the claim is not indefinite. Therefore, Applicants respectfully request that this rejection be withdrawn.

**REJECTION OF CLAIMS 1, 3-10 AND 15-17 UNDER 35 U.S.C. §102(b)**

The Examiner rejected claims 1, 3-10 and 15-17 under 35 U.S.C. §102(b) as being anticipated by Petersen. *See* Office Action page 2. The Applicants respectfully traverse this rejection.

It is well settled that a claim is anticipated under 35 U.S.C. § 102(b) only if “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” MPEP §2131, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Claims 1, 3-10, and 15-17 include the limitation that the airbag has a housing configured to retain the inflatable cushion. Claims 1, 3-10, and 15-17 also include the limitation that a majority of the inflation fluid source is positioned within the housing. Such limitations are not taught or disclosed by Petersen.

Petersen does not disclose a housing configured to retain the inflatable cushion. Rather, Petersen discloses a module base plate. *See* column 4, lines 52-57 (reference numeral 42 on Figure 4). According to Merriam-Webster’s online dictionary, a plate is a horizontal structural member that provides bearing and anchorage. On the other hand, a housing is an enclosure. A horizontal base plate is not a housing because a base plate cannot enclose anything. Therefore, Petersen does not anticipate these claims because it does not disclose a housing.

Moreover, Petersen does not disclose a majority of an inflation fluid source positioned within a housing, since Petersen does not disclose a housing, but rather a base plate (42). *See supra*. As such, a majority of the inflator (44) cannot be disposed within a housing, because there is no housing for the inflator to be disposed within. Since Petersen does not disclose "each and every element," namely a housing and a majority of the inflator positioned within the housing, the anticipation definition is not met. Withdrawal of this rejection is respectfully requested.

**REJECTION OF CLAIM 2 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claim 2 under 35 U.S.C. §103(a) as being unpatentable over Petersen in view of Jarboe. *See* Office Action page 5. The Applicants respectfully traverse this rejection.

In order to reject a claim under §103, the Examiner must show that the subject matter as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made: 35 U.S.C. §103(a). In making this determination, the Examiner must (1) determine the scope and content of the prior art; (2) ascertain the differences between the prior art and the claimed invention; (3) determine the level of ordinary skill in the pertinent art; and (4) evaluate evidence of secondary considerations. MPEP §2141 (citing *Graham v. John Deere*, 383 U.S. 1 (1966)). In determining the scope and content of the prior art and the differences between the prior art and the claimed invention, the Examiner has the burden of establishing a *prima facie* case of obviousness. MPEP §2142.

Petersen discloses a driver side airbag baffle mount. *See* column 1, lines 4-7, 15-19, and 51-56. Petersen differs from the claimed invention in that Petersen does not disclose a substantially cylindrical housing, as acknowledged by the Examiner. *See* Office Action page 5. Rather, Petersen discloses a module base plate (42). *See* column 4, lines 52-57. Also unlike the claimed invention, Petersen does not disclose a majority of the inflation fluid source positioned within the housing because there is no housing disclosed in Petersen.

Jarboe discloses a passenger side airbag module in a cylindrical can. *See* column 1, lines 5-9, column 3, lines 22-24. The airbag module of Jarboe incorporates an elongated cylindrical inflator with 40% of the inflator body contained within the module. *See* column 2, lines 26-28, column 4, lines 26-29. Jarboe differs from the claimed invention in that Jarboe does not disclose a majority of the inflation fluid source positioned adjacent to or within the housing. Instead, Jarboe discloses that a majority (i.e. 60%) of the inflator extends *outside* the module housing. *See* column 4, lines 26-29.

A *Prima Facie* Case of Obviousness Has Not Been Made

The Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness. It is well settled that the PTO has the burden to establish a *prima facie* case of obviousness. *See* MPEP §2142. "If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." *Id.* A *prima facie* case of obviousness is established only if the Examiner shows that (1) there is some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there is a reasonable expectation of success; and (3) the prior art teaches or suggests all of the claim limitations. *See id.*

1. The Prior Art Does Not Teach or Suggest All Claim Limitations

According to MPEP §2143.03, to establish a *prima facie* case of obviousness, "all of the claim limitations must be taught or suggested by the prior art." (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (C.C.P.A. 1974)). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." MPEP §2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Claim 2 includes the limitation that a majority of the inflation fluid source is positioned within a housing. This limitation is not taught or disclosed by either Petersen or Jarboe.

As discussed in conjunction with the Examiner's above §102(b) rejection, Petersen discloses a base plate and not a housing. Therefore, a majority of the inflator (44) cannot be positioned within a housing because there is no housing to enclose the inflator. Jarboe teaches that 40% of the length of the elongated cylindrical body of the inflator is disposed within the airbag module. See column 4, lines 26-29. Therefore, Jarboe teaches that a majority (60%) of the inflator body is disposed *outside*, not inside of the airbag module.

Having a majority of the inflation fluid source positioned within the housing is a significant improvement over the prior art. The benefit of such a configuration is described in the specification of the present application:

[T]here is little material extending beyond the point of attachment of the inflation fluid source 20 to the instrument panel into the interior of the vehicle. Thus, the airbag module uses space efficiently and...there is little weight behind to the point of attachment to create unwanted forces upon the instrument panel. Additionally, the module 10 has a smaller or shorter profile and more easily fits within the instrument panel. Accordingly, the present invention does not require additionally [*sic*] bracketry to support the module 10 within the passenger side of the vehicle.

See page 10, line 25 to page 11, line 7.

Jarboe not only fails to recite the limitation of a majority of the inflation fluid source positioned within the housing, but it teaches away from this limitation by teaching a majority of the inflator outside the module housing. As a result, Jarboe cannot be combined with Petersen. Since neither Petersen nor Jarboe disclose each and every claim limitation, and Jarboe teaches away from their combination, the combination of Petersen and Jarboe does not render these claims *prima facie* obvious under §103(a). Withdrawal of this rejection is respectfully requested.

2. There is No Teaching or Motivation to Combine Petersen and Jarboe

According to MPEP §2143, to establish *prima facie* obviousness, there must be some suggestion or motivation to modify the reference or to combine reference teachings to arrive at the claimed invention. "The teaching or suggestion to make the claimed combination ... must be

found in the prior art, not in applicant's disclosure." MPEP §2143, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." MPEP §2143.01, citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In the present case, the prior art references viewed as a whole contain no objective teaching that suggests the desirability of the combination. One skilled in the art would not have been motivated to combine isolated teachings from the prior art references to arrive at the claimed invention without the benefit of hindsight from Applicants' disclosure and claims.

As noted by the Examiner, the airbag module of Petersen does not disclose a substantially cylindrical housing. See Office Action page 5. There is no mention in either Petersen or Jarboe as to why a *cylindrical* housing is preferred. Jarboe discloses that a rectangular housing would be just as sufficient. See column 4, lines 14-15. However, the present application discloses that a cylindrical housing provides good hoop strength to withstand deformation during inflation of the airbag. See Specification, page 4, lines 9-11.

The Examiner asserted the motivation to combine the cylindrical housing of Jarboe with the airbag module of Petersen was to "prevent the inflator and folded airbag from being damaged..." See Office Action, page 5. However, non-cylindrical airbag housings are often used as evidenced by U.S. Patent No.'s 5,597,176, 6,170,176, and 5,988,675. Since no objective teaching in either Petersen or Jarboe indicates why a cylindrical housing is preferred it appears that the Examiner has impermissibly used the benefit of hindsight from Applicants' disclosure and claims. As a result, this combination of references may not be used to reject the present claims under §103(a). Withdrawal of this rejection is respectfully requested.

#### **REJECTION OF CLAIMS 11-14 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claims 11-14 under §103(a) as being unpatentable over Petersen in view of Ludwig. See Office Action page 5. The Applicants respectfully traverse this rejection.

As noted above, Petersen discloses a driver side airbag baffle mount. *See* column 1, lines 4-7, 15-19, and 51-56. Petersen differs from the claimed invention in that Petersen does not disclose a housing or a majority of the inflation fluid source positioned within the housing.

Ludwig discloses a dual stage inflator capable of modulated pressurization. *See* column 1, lines 9-11; column 5, lines 45-48. Ludwig differs from the claimed invention in that Ludwig discloses only the inflator apparatus and not the airbag module and its component parts.

As noted above, all claim limitations must be taught or suggested by the prior art to establish *prima facie* obviousness. MPEP §2143.03. Claims 11-14 include the limitations of a housing and a majority of the inflation fluid source positioned within the housing. As noted above, these limitations are not taught or disclosed by Petersen. Neither limitation is disclosed in Ludwig, as Ludwig merely discloses an airbag inflator. Therefore, Petersen and Ludwig cannot be combined to reject claims 11-14 because Petersen and Ludwig do not teach all of the limitations recited.

Furthermore, claims 13 and 14 contain limitations regarding the weight of the inflation fluid source. Such limitations are not disclosed in either Petersen or Ludwig. Ludwig merely gives disclosure regarding inflator output volume, not inflator weight. Therefore, the combination of Petersen and Ludwig does not render these claims *prima facie* obvious under §103(a). Withdrawal of this rejection is respectfully requested.

#### **REJECTION OF CLAIMS 18-26 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claims 18-26 under 35 U.S.C. §103(a) as being unpatentable over Petersen in view of Jarboe. *See* Office Action page 6. The Applicants respectfully traverse this rejection.

As discussed at length in the above remarks in conjunction with the rejection of claim 2, Petersen and Jarboe are not combinable to establish a *prima facie* case of obviousness because neither reference teaches all the claim limitations and there is no teaching or motivation to combine Petersen and Jarboe. As a result of this paper, claims 18-26 include the limitation that a

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majority of the inflation fluid source is positioned within the housing. The arguments set forth above are incorporated herein with respect to the rejection of claims 18-26 because these claims contain the same distinguishing limitations found in claim 2. Withdrawal of this rejection is respectfully requested.

**REJECTION OF CLAIMS 18 AND 27-30 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claims 18 and 27-30 under 35 U.S.C. §103(a) as being unpatentable over Petersen and Jarboe and further in view of Ludwig. *See* Office Action page 8. The Applicants respectfully traverse this rejection.

To establish *prima facie* obviousness, all claim limitations must be taught by the cited references and the Examiner must demonstrate an objective suggestion or motivation to combine reference teachings to arrive at the claimed invention. *See* MPEP §2142-43. As noted in the previous sections regarding rejections under §103(a), Petersen and Jarboe are not combinable to establish a *prima facie* case of obviousness because there is no teaching or motivation to combine and both Petersen and Jarboe fail to teach all claim limitations, namely a majority of the inflation fluid source positioned within the housing.

Ludwig is cited for its disclosure of an inflator that produces 60 to 200 liters of gas for airbags. *See* Office Action, page 8. However, Ludwig's disclosure does not remedy the problems associated with combining Petersen and Jarboe. Ludwig discloses a dual stage inflator capable of modulated pressurization. *See* column 1, lines 9-11, column 5, lines 45-48. Ludwig does not disclose a majority of the inflation fluid source positioned within the housing, nor does Ludwig contain any teaching to suggest the desirability of combining the teachings of Petersen and Jarboe. Therefore, the combination of Petersen, Jarboe and Ludwig is also improper. Withdrawal of this rejection is respectfully requested.



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**REJECTION OF CLAIM 31 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claim 31 under §103(a) as being unpatentable over Petersen and Jarboe and further in view of Ludwig. The Applicants respectfully traverse this rejection.

As noted in the above sections regarding claim rejections under §103, in order to establish a *prima facie* case of obviousness, all claim limitations must be taught or suggested by the prior art. See MPEP §2143.03. As a result of this paper, claim 31 includes the limitation that a majority of the inflation fluid source is positioned within the housing. As discussed in the above remarks regarding the rejections under §103(a), Petersen, Jarboe, and Ludwig fail to disclose this limitation. Consequently, withdrawal of this rejection is respectfully requested.

**CONCLUSION**

In view of the foregoing, Applicants respectfully assert that claims 1-31 are patentably distinct from the cited references, and request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,



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Date: September 11, 2003

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